

HOUSE BILL No. 1299

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-25-5.

Synopsis: Voluntary remediation plans. Revises the law concerning the voluntary remediation of hazardous substances and petroleum. Authorizes the department of environmental management (department) to reject an application for participation in the voluntary remediation program on the grounds that the release or threatened release of a hazardous substance or petroleum described in the application was previously subject to a voluntary remediation agreement and the program participation of the applicant under that agreement was terminated. Provides that an applicant, to participate in the voluntary remediation program, must submit to the department for approval: (1) a voluntary remediation investigation plan for either a proposed investigation or a completed investigation; and (2) a voluntary remediation work plan for either a proposed remediation project or a completed remediation project. Establishes requirements and deadlines for voluntary remediation investigation plans and voluntary remediation work plans. Provides that a voluntary remediation agreement between the department and an applicant must include: (1) a requirement that the applicant fully determine the nature and extent of the actual or threatened release within a certain period; and (2) a requirement that the applicant submit to the department a proposed voluntary remediation work plan or a voluntary remediation work plan for a completed remediation project within a certain period. Provides that if an applicant's voluntary remediation work plan is approved and the applicant proceeds with the work plan, the applicant is required to report to the commissioner on the remediation at least annually. Provides that a civil or administrative action against an applicant is not

(Continued next page)

Effective: July 1, 2016.

Wolkins

January 12, 2016, read first time and referred to Committee on Environmental Affairs.



barred after the applicant and the department enter into a voluntary remediation agreement if: (1) the applicant withdraws from the agreement; (2) the commissioner withdraws from the agreement and the withdrawal is upheld in any appeal; or (3) the commissioner terminates the applicant's participation in the program and the termination is upheld in any appeal. Recognizes circumstances under which the commissioner may terminate an applicant's participation in the program, including the failure of the applicant to take appropriate and timely action to address the release or threatened release of a hazardous substance or petroleum.



Introduced

Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1299

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 13-25-5-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) The department
3 may reject an application submitted under section 2 of this chapter only
4 for one (1) or more of the following reasons:
5 (1) A state or federal enforcement action that concerns the
6 remediation of the hazardous substance or petroleum described in
7 the application is pending.
8 (2) A federal grant requires an enforcement action at the site.
9 (3) The condition of the hazardous substance or petroleum
10 described in the application constitutes an imminent and
11 substantial threat to human health or the environment.
12 (4) The application is not complete.
13 (5) **The release or threatened release of a hazardous substance**
14 **or petroleum described in the application was previously**
15 **subject to a voluntary remediation agreement, and the**



1 **participation of the applicant under that agreement in the**
 2 **voluntary remediation program was terminated for any**
 3 **reason.**

4 (b) If an application is rejected under subsection (a)(4), the
 5 department, not more than forty-five (45) days after the department
 6 receives the application, shall provide the applicant with a list of all
 7 information needed to make the application complete. If the department
 8 fails to comply with this subsection, the application shall be considered
 9 completed for the purposes of this chapter.

10 (c) If the department rejects an application, the department shall do
 11 the following:

12 (1) As described under IC 4-21.5-3-4(b) and IC 4-21.5-3-4(c),
 13 notify the applicant that the department rejected the application.

14 (2) Explain the reason the department rejected the application.

15 **SECTION 2. IC 13-25-5-7 IS AMENDED TO READ AS**
 16 **FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) If the department**
 17 **determines under section 4 of this chapter that an application**
 18 **applicant is eligible under section 4 of this chapter to participate in**
 19 **the voluntary remediation program, the applicant, may to**
 20 **participate, must submit to the department for approval:**

21 (1) a ~~proposed~~ voluntary remediation investigation plan ~~to the~~
 22 ~~department; in accordance with the requirements of subsection~~
 23 **(b), within the time frame established in section 8(a)(8) of this**
 24 **chapter, which may be for either:**

25 (A) a proposed investigation; or

26 (B) a completed investigation; and

27 (2) a ~~proposed~~ voluntary remediation work plan, ~~to the~~
 28 ~~department; or within the time frame established in section~~
 29 **8(a)(10) of this chapter, which may be for either:**

30 (A) a proposed remediation project in accordance with the
 31 requirements of subsection (c); or

32 (B) a completed remediation project in accordance with
 33 the requirements of subsection (d).

34 (3) a ~~voluntary remediation work plan for a completed~~
 35 ~~remediation project to the department:~~

36 **(b) A proposed voluntary remediation investigation plan or a**
 37 **voluntary remediation investigation plan for a completed**
 38 **investigation must include the following:**

39 (1) Detailed documentation of the investigation conducted by
 40 the applicant in preparing the voluntary remediation
 41 investigation plan.

42 (2) A statement of work to determine the nature and extent of



the actual or threatened release, including vapor intrusion if applicable, in accordance with guidelines established by the department.

(3) Plans concerning the following:

(A) Quality assurance for the implementation of the investigation.

(B) Descriptions of sampling and analysis.

(C) Health and safety considerations.

(4) A schedule concerning the implementation of all tasks set forth in the statement of work.

~~(b)~~ (c) A proposed voluntary remediation work plan must include the following:

(1) Detailed documentation of the investigation conducted by the applicant in preparing the proposed voluntary remediation work plan and a description of the work to be performed by the applicant to determine the nature and extent of the actual or threatened release.

(2) A proposed statement of work to accomplish the remediation in accordance with guidelines established by the department.

(3) Plans concerning the following:

(A) Quality assurance for the implementation of the proposed remediation project.

(B) Descriptions of sampling and analysis.

(C) Health and safety considerations.

(D) Community relations and community comment in planning, cleanup objectives, and implementation processes.

(E) Data management and record keeping.

~~(f)~~ (4) A proposed schedule concerning the implementation of all tasks set forth in the proposed statement of work.

~~(e)~~ (d) A voluntary remediation work plan for a completed remediation project must include the following:

(1) Detailed documentation of the investigation conducted by the applicant in preparing the proposed voluntary remediation work plan and a description of the work performed by the applicant to determine the nature and extent of the actual or threatened release.

(2) A statement of work performed to accomplish the remediation in accordance with rules or guidelines established by the department **or board**.

(3) Plans concerning the following:

(A) Quality assurance for the implementation of and, if appropriate, plans for future oversight of the remediation



project.

(B) Descriptions of sampling and analysis conducted before and after the remediation is performed.

(C) Health and safety considerations.

(D) Community comment.

(E) Data management and record keeping.

(F) Criteria used to determine remediation levels and remediation methodology.

(4) Other information the department determines **is to be** necessary to evaluate the work plan and determine **if whether** the remediation objectives have been achieved.

SECTION 3. IC 13-25-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: JULY 1, 2016] Sec. 8. (a)

Before the department evaluates a **voluntary remediation investigation plan or a proposed** voluntary remediation work plan, the applicant ~~who submitted the work plan~~ and the commissioner must enter into a voluntary remediation agreement that sets forth the terms and conditions of the evaluation and the implementation of the work plan. A voluntary remediation agreement must include the following:

(1) Provisions for the following:

(A) A requirement that the department provide the applicant with an itemized list of estimated costs the department may incur under this chapter.

(B) The recovery of all reasonable costs that:

(i) are incurred by the department in the review and oversight of the work plan;

(ii) are attributable to the voluntary remediation agreement; and

(iii) exceed the fee submitted by the applicant under section 2 of this chapter.

(C) A schedule of payments to be made by the applicant to the department to recover the costs to the department.

(2) A mechanism to resolve disputes arising from the evaluation, analysis, and oversight of the implementation of the work plan, including any of the following:

(A) Arbitration.

(B) Adjudication under IC 4-21.5.

(C) A dispute resolution procedure provided under the Indiana Rules of Court.

(3) A provision concerning the indemnification of the parties.

(4) A provision concerning retention of records.

(5) A timetable for the department to do the following:



- 1 **(A) Reasonably review and evaluate the adequacy of the**
- 2 **investigation plan.**
- 3 **(B) Make a determination concerning the approval or**
- 4 **rejection of the investigation plan.**
- 5 ~~(A)~~ **(C) Reasonably review and evaluate the adequacy of the**
- 6 work plan.
- 7 ~~(B)~~ **(D) Make a determination concerning the approval or**
- 8 rejection of the work plan.
- 9 (6) A provision concerning applicable interagency coordination.
- 10 (7) A provision specifying the proposed remediation objectives to
- 11 be achieved on the site, as described in section 8.5 of this chapter.
- 12 (8) The requirement that the applicant submit to the department
- 13 a proposed voluntary remediation ~~work~~ **investigation plan or a**
- 14 **voluntary remediation investigation plan for a completed**
- 15 **remediation project:**
- 16 (A) not later than ~~one hundred eighty (180)~~ **sixty (60)** days
- 17 after the date the voluntary remediation agreement is signed;
- 18 or
- 19 (B) after a longer period if the extension is agreed to by the
- 20 department and the applicant.
- 21 **(9) The requirement that the applicant fully determine the**
- 22 **nature and extent of the actual or threatened release in**
- 23 **accordance with an approved voluntary remediation**
- 24 **investigation plan:**
- 25 (A) not later than two (2) years after the date the voluntary
- 26 remediation agreement is signed; or
- 27 (B) after a longer period, if the extension is agreed to by
- 28 the department and the applicant.
- 29 **(10) The requirement that the applicant submit to the**
- 30 **department a proposed voluntary remediation work plan or**
- 31 **a voluntary remediation work plan for a completed**
- 32 **remediation project:**
- 33 (A) not later than sixty (60) days after the department
- 34 notifies the applicant in writing that the applicant has fully
- 35 determined the nature and extent of the actual or
- 36 threatened release in accordance with an approved
- 37 voluntary remediation investigation plan; or
- 38 (B) after a longer period, if the extension is agreed to by
- 39 the department and the applicant.
- 40 ~~(9)~~ **(11) Any other conditions considered necessary by the**
- 41 commissioner or the applicant concerning the effective and
- 42 efficient implementation of this chapter.



(b) If an agreement is not reached between an applicant and the commissioner within a reasonable time after good faith negotiations have begun between the applicant and the commissioner:

- (1) the applicant or the commissioner may withdraw from the negotiations; and
- (2) the department shall refund the unexpended part of the applicant's application fee.

SECTION 4. IC 13-25-5-8.5, AS AMENDED BY P.L.159-2011, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 8.5. (a) A voluntary remediation work plan must specify the remediation objectives for the site. Subsections (b) through (e) apply to a site regardless of whether the site was entered into the voluntary remediation program before July 1, 2009, or after June 30, 2009.

(b) The remediation objectives for each hazardous substance and any petroleum on the site shall be based on:

- (1) background levels of hazardous substances and petroleum that occur naturally on the site; or
- (2) an assessment of the risks pursuant to subsection (d) posed by the hazardous substance or petroleum presently found on the site taking into consideration the following:
 - (A) Expected future use of the site.
 - (B) Measurable risks to human health, natural resources, or the environment based on the:
 - (i) activities that take place; and
 - (ii) environmental impact;

(c) If: ~~the:~~

- (1) ~~the~~ nature and extent of the hazardous substance or petroleum is adequately characterized ~~under the voluntary remediation work plan;~~ **in accordance with an approved voluntary remediation investigation plan,** considering the remediation objectives developed under this section; and
- (2) the level of the hazardous substance or petroleum is demonstrated to be below:

- (A) background levels of the hazardous substances and petroleum that occur naturally on the site; or
 - (B) the risk based levels developed under subsection (d);
- additional action is not necessary to protect human health or the environment.

(d) Risk based remediation objectives shall be based on one (1) of the following:



(1) Levels of hazardous substances and petroleum calculated by the department using standard equations and default values for particular hazardous substances or petroleum.

(2) Levels of hazardous substances and petroleum calculated using site specific data for the default values in the department's standard equations.

(3) Levels of hazardous substances and petroleum developed based on site specific risk assessments that take into account site specific factors, including remedial measures, restrictive covenants, and environmental restrictive ordinances that:

(A) manage risk; and

(B) control completed or potential exposure pathways.

(e) The department shall consider and give effect to restrictive covenants and environmental restrictive ordinances in evaluating risk based remediation proposals.

(f) The department, or a person authorized under subsection (g), shall give written notice to a municipal corporation that the department is relying on an environmental restrictive ordinance adopted by the municipal corporation as part of a risk based remediation proposal:

(1) approved by the department; and

(2) conducted under IC 13-22, IC 13-23, IC 13-24, IC 13-25-4, or IC 13-25-5.

(g) The department may delegate authority to give the written notice referred to in subsection (f) to the person who proposed the risk based remediation.

SECTION 5. IC 13-25-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. (a) After the commissioner and an applicant have signed a voluntary remediation agreement described under section 8 of this chapter, the department or a person under contract with the department shall do the following:

(1) Review and evaluate the site and the affected area surrounding the site.

(2) Review and evaluate the ~~documentation of the investigation and feasibility study conducted by the applicant or the applicant's representative for accuracy and thoroughness.~~ **voluntary remediation investigation plan for quality, efficiency, and safety based on guidelines established by the department.**

(3) Review and evaluate the ~~proposed~~ voluntary remediation work plan for quality, efficiency, and safety based on guidelines established by the department.

(4) Make a recommendation to the commissioner concerning whether the commissioner should:



- (A) approve;
- (B) modify and approve; or
- (C) reject;

the ~~proposed~~ voluntary remediation work plan.

(b) At any time during the evaluation of a **voluntary remediation investigation plan** or a ~~proposed~~ voluntary remediation work plan, the commissioner or the department may request that an applicant submit additional or corrected information to the department. **If an applicant may: fails to (+) comply with the request, or the commissioner may:**

~~(2) (1) withdraw from the applicant's proposed voluntary remediation agreement; and work plan from consideration.~~

(2) terminate the applicant's participation in the voluntary remediation program.

SECTION 6. IC 13-25-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 10. Subject to section 11 of this chapter, after receiving a recommendation under section 9 of this chapter, the commissioner shall:

- (1) approve;
- (2) modify and approve; or
- (3) reject;

the ~~proposed~~ voluntary remediation work plan.

SECTION 7. IC 13-25-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 11. (a) Before the commissioner approves or rejects a ~~proposed~~ voluntary remediation work plan under section 10 of this chapter, the commissioner must:

- (1) notify local government units located in a county affected by the ~~proposed~~ voluntary remediation work plan of the work plan;
- (2) provide that a copy of the ~~proposed~~ voluntary remediation work plan be placed in at least one (1) public library in a county affected by the work plan; and
- (3) publish a notice requesting comments concerning the ~~proposed~~ voluntary remediation work plan.

(b) A comment period of at least thirty (30) days must follow publication of a notice under this section. During a comment period, interested persons may do the following:

- (1) Submit written comments to the commissioner concerning the ~~proposed~~ voluntary remediation work plan.
- (2) Request a public hearing concerning the ~~proposed~~ voluntary remediation work plan.

(c) If the commissioner receives at least one (1) written request, the commissioner may hold a public hearing in the geographical area affected by the ~~proposed~~ voluntary remediation work plan on the



question of whether to approve or reject the work plan. The commissioner shall consider all written comments and public testimony.

SECTION 8. IC 13-25-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 12. If the commissioner rejects a ~~proposed~~ voluntary remediation work plan under section 10 of this chapter:

(1) the commissioner shall, under applicable provisions set forth in IC 4-21.5-3-5(b) and IC 4-21.5-3-5(c), notify the applicant and specify the reasons for rejecting the work plan; and

(2) the applicant may appeal the commissioner's decision under IC 4-21.5.

SECTION 9. IC 13-25-5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 13. If the commissioner approves or modifies and approves a ~~proposed~~ voluntary remediation work plan under this chapter, the commissioner shall notify the applicant in writing, under the applicable provisions set forth in IC 4-21.5-3-5(b) and IC 4-21.5-3-5(c), of the following:

(1) That the voluntary remediation work plan has been approved or modified and approved.

(2) The date:

(A) the applicant may begin implementing the work plan; and

(B) by which the work plan must be completed.

(3) The applicant's right to appeal the commissioner's decision under IC 4-21.5.

SECTION 10. IC 13-25-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 15. If an applicant who submitted an approved voluntary remediation work plan proceeds with the work plan:

(1) the department or a person under contract with the department shall ~~do the following:~~ (1) oversee and review the implementation of the voluntary remediation work plan; **and**

(2) ~~Make regular reports~~ **at least annually, the applicant shall report** to the commissioner concerning the remediation, **including the applicant's compliance with the schedule established under section 13(2) of this chapter.**

SECTION 11. IC 13-25-5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 17. If the commissioner determines that an applicant has not successfully completed a voluntary remediation work plan approved under this chapter, the commissioner shall notify the applicant of this determination under IC 4-21.5. **A notice of unsuccessful completion given by the commissioner under**



1 **this section may be appealed under IC 4-21.5.**

2 SECTION 12. IC 13-25-5-18, AS AMENDED BY P.L.78-2009,
3 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2016]: Sec. 18. (a) If the commissioner issues a certificate to
5 a person under section 16 of this chapter, the governor shall also
6 provide the person with a covenant not to sue for any liability,
7 including future liability, or a claim resulting from or based upon the
8 release or threatened release of a hazardous substance or petroleum that
9 is addressed by an approved voluntary remediation work plan under
10 this chapter.

11 (b) A covenant not to sue issued under this section bars suit against:

12 (1) a person who received the certificate of completion under
13 section 16 of this chapter; or

14 (2) any other person who receives the certificate of completion:

15 (A) through a legal transfer of the certificate of completion; or

16 (B) by acquiring property to which the certificate of
17 completion applies;

18 from all public or private claims arising under this title or rules adopted
19 under this title in connection with the release or threatened release of
20 a hazardous substance or petroleum that was the subject of the
21 approved voluntary remediation work plan, except as provided in
22 subsection (c).

23 (c) A covenant not to sue issued under this section may not apply to
24 future liability for a condition or the extent of a condition that:

25 (1) was present:

26 (A) on property that was involved in an approved and
27 completed voluntary remediation work plan; and

28 (B) at the time the commissioner issued the certificate of
29 completion under section 16 of this chapter; and

30 (2) was not known to the commissioner at the time the
31 commissioner issued the certificate of completion under section
32 16 of this chapter.

33 (d) A certificate of completion issued under section 16 of this
34 chapter may include conditions that must be performed or maintained
35 after issuance of the certificate.

36 (e) A covenant not to sue issued under this section may include
37 conditions that must be performed or maintained after issuance of the
38 covenant.

39 (f) Except as:

40 (1) provided under federal law; or

41 (2) agreed to by a federal governmental entity;

42 a covenant not to sue issued under this section may not release a person



from liability to the federal government for claims based on federal law.

(g) After an applicant and the department have signed a voluntary remediation agreement, a person may not bring an action, including an administrative action, against the applicant or any other person proceeding under this chapter on behalf of the applicant for any cause of action arising under this title or rules adopted under this title and relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the agreement. However, this section does not apply if:

(1) the applicant fails to ~~file a proposed voluntary remediation work plan within the~~ **comply with any of the time period periods** established in section ~~8(a)(8)~~ **8(a)** of this chapter;

(2) the commissioner rejects a ~~proposed~~ voluntary remediation work plan submitted in good faith and the rejection is upheld in any appeal brought under section 12 of this chapter;

(3) ~~the commissioner determines that~~ the applicant or another person proceeding under this chapter on behalf of the applicant ~~fails has failed~~ to complete a voluntary remediation in accordance with an approved voluntary remediation work plan **and the determination is upheld in any appeal under section 17 of this chapter; or**

(4) the commissioner withdraws the commissioner's approval of the voluntary remediation work plan and the withdrawal is upheld in any appeal under section 19 of this chapter;

(5) the applicant withdraws from the voluntary remediation agreement;

(6) the commissioner withdraws from the voluntary remediation agreement and the withdrawal is upheld in any appeal under section 19 of this chapter; or

(7) the commissioner terminates the applicant's participation in the voluntary remediation program and the termination is upheld in any appeal under section 19 of this chapter.

~~However,~~ If the commissioner ~~rejects a voluntary remediation work plan,~~ withdraws approval of the plan, ~~withdraws from a voluntary remediation agreement, or terminates an applicant's participation in the voluntary remediation program~~ under section 19(a)(2) of this chapter, the commissioner may bring an action, including an administrative action, against the applicant.

(h) A person who purchases property that is the subject of a voluntary remediation agreement at the time the property is purchased may not be subject to an enforcement action to the same extent as an



applicant under subsection (g).

SECTION 13. IC 13-25-5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 19. (a) This chapter does not prohibit or limit the commissioner from **rejecting a voluntary remediation work plan**, withdrawing the commissioner's approval of a voluntary remediation work plan at any time during the implementation of the work plan, **withdrawing from a voluntary remediation agreement, or terminating an applicant's participation in the voluntary remediation program** if:

(1) the person **proposing or** implementing the work plan fails substantially to comply with the terms and conditions of:

(A) an approved voluntary remediation investigation plan;

~~(A)~~ **(B) the an approved** voluntary remediation work plan; or

~~(B)~~ **(C)** a voluntary remediation agreement; or

(2) a hazardous substance or petroleum becomes an imminent and substantial threat to human health or the environment; **or**

(3) the applicant fails to take appropriate and timely action to address the release or threatened release of a hazardous substance or petroleum.

(b) The withdrawal of the approval of a voluntary remediation work plan, **the commissioner's withdrawal from a voluntary remediation agreement, or the termination of an applicant's participation in the voluntary remediation program under subsection (a)** may be appealed under IC 4-21.5.

